

REAL ESTATE TRANSFER NEWS

October 1997

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Bureau of Utility & Special Taxes
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708-8933

The “**Guidelines for Real Estate Transfer Fee and Return**” (Publication 802, R. 2/97) can be found on the internet at <http://www.dor.state.wi.us>. Click on “Forms & Publications”, then “Local Government Forms & Publications.”

1Q. A married couple (H & W) own real property together which they want to convey directly into an LLC whose sole member is W. Would this conveyance be exempt from transfer fee?

A. Only one half the value of W would be exempt per s. 77.25(15s), Stats., since W is the sole member and provided the conveyance is for no consideration or for the assumption of debt only. The half owned by H is subject to fee. Since H is not a member of the LLC, it does not meet the relationship requirement and is treated the same as a conveyance to any unrelated entity. However, H could convey to W his one half interest and be exempt per s. 77.25(8m), Stats., and then W could convey her entire interest into the LLC and be exempt per s. 77.25(15s), Stats.

2Q. Could you give examples of required relationships for exemption 15 for corporations, 15m for partnerships and 15s for limited liability companies?

A. All exemption 15 series require “who are related to each other as spouses, lineal ascendants, lineal descendants, siblings or spouses of siblings”. Examples would be as follows:

Sole:	Sole individual (Corporation or LLC only)
Spouses:	Husband and Wife
Lineal:	Parent(s) and Child(ren) Parent(s) and Son-in-law / Daughter-in-law Grandparent(s) and Grandchild(ren)
Siblings:	Brother(s) and Sister(s)
Spouses of Siblings:	Brother(s) and Sister(s)-in-law / Brother(s) and Brother(s)-in-law Sister(s) and Sister(s)-in-law / Sister(s) and Brother(s)-in-law Brother(s)-in-law and Sister(s)-in-law or Brother(s)-in-law

- Any combination of the above relationships would qualify.
- The conveyance can be to or from the entity.
- Conveyances from a corporation has an additional requirement of having to have been owned by the corporation for three or more years.
- Uncles, aunts, nieces and nephews do not meet the above relationship requirements.

3Q. Grandmother is gifting her home to her granddaughter and reserving a life estate. Is this exempt from fee per s. 77.25(8) or (13), Stats.?

A. No. Exemption 8 is between parent and child, not grandparent and grandchild. A transfer fee is due on the fair market value of the property less the value of the life estate. Unless the actual value of the real estate conveyed is less than \$100.00, exemption 13 does not apply.

4Q. My boyfriend cosigned the mortgage and was put on title with me when I purchased my home. He now wants to remove his name from title by conveying his interest to me. Is this exempt from fee per s. 77.25(3) or (10), Stats.?

A. No. A transfer fee is due on the conveyance of one half the value of the property whether or not he had paid anything. Since they both held title to the property, he is conveying one half the interest in real property and exemption 3 does not apply. Exemption 3 provides for a nonconveyance of an interest in real property; the instrument recorded merely corrects the deed that conveyed the real estate. The use of exemption 10 is to solely provide or release security in a debt. This exemption also does not convey an interest in real property, but merely places or releases a lien on the property. In addition, the use of exemption s. 77.25(5), Stats. as partition does not apply. Partition is an equal division among co-owners and not a conveyance between them per s. 77.21(1k), Stats.

Example of exemption 10: "A" is buying property and bank wants "B" to cosign the loan and be put on title. "A" should take title solely from seller. "A" then gives "B" a deed "for collateral only" and exemption 10 from transfer fee is used. When "B" is no longer needed for security, "B" deeds back to "A" "releasing collateral" and referencing the deed by which security was given and uses exemption 10.

5Q. An Individual creates a trust and conveys property to it. The beneficial rights to the trust are sold by the creator of the trust. (This type of trust is commonly used in Illinois.) When the rights are sold, nothing is recorded since this is similar to selling stock or an interest in a partnership and is considered personal property. Now the trustee is to convey the real property to the beneficiaries. Is the conveyance exempt from fee per s. 77.25(9), Stats. ?

A. No. To be exempt, the conveyance must be "from a trustee to beneficiary without actual consideration." The beneficiaries purchased their interest; consequently, the conveyance does not meet the requirement to be "for no consideration."

6Q. If an improper exemption is taken, can the Department assess a penalty?

- A.** Yes. A penalty will be imposed per s. 77.26(8), Stats. which reads that if “an exemption was improperly claimed under s. 77.25, the department shall assess and collect a penalty of \$25 or 25% of the additional fee due, whichever is greater”. This statement is on the transfer return. The imposition of the penalty was upheld in the April 15, 1996 decision of Heritage Place Limited Partnership vs. Wisconsin Department of Revenue, Waukesha County Circuit Court, Case No. 95-CV-2292.

7Q. What do we do when an individual who is not a U.S. citizen (alien) buys property and does not have a social security number?

- A.** The Wisconsin Real Estate Transfer Return (PE-500) is a tax related document which requires a taxpayer identification number to be furnished. When a alien individual who does not have a social security number (SS#) or a individual taxpayer identification number (ITIN) and legally is not required to have one, simply state “nonresident alien” in the social security box. To determine whether or not an individual requires a SS# or ITIN, consult the *U.S. Tax Guide for Aliens*, Publication 519.